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Annual Report of the Register of Copyrights 1994

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**ANNUAL REPORT OF THE
REGISTER OF COPYRIGHTS**

For the fiscal year ending September 30

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"To promote the Progress of Science and useful Arts. . . ."

Article 1, Section 8
U.S. Constitution

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THE COPYRIGHT OFFICE

TRANSITION AND CHANGE

Transition is defined as a passage from one state or place to another, as change itself. For the Copyright Office, fiscal year 1994 was clearly a year of transition and a year of implementing change. It was a year of exceedingly hard work that called upon all the resources the Office had to offer. Without a doubt the biggest challenge of the year was the vast and complex process of implementing the Copyright Royalty Tribunal (CRT) Reform Act of 1993. Truly a misnomer, the act did not reform the CRT, but rather abolished it in one swift stroke, mandating its replacement with a system of ad hoc Copyright Arbitration Royalty Panels (CARPs) to be convened by the Librarian of Congress and supported administratively by the Copyright Office. This was not a matter of one agency simply transferring its functions to another. Rather, the legislation called for the implementation of an entirely new way of rate setting and distributing the millions of dollars collected under the compulsory licenses and statutory obligations of the copyright law, a way for which no previous model existed.

At the same time, the Office strove to the extent possible to implement change as suggested by the Advisory Committee on Copyright Registration and Deposit (ACCORD) and as incorporated into the Copyright Reform Act of 1993. The act passed the House of Representatives in November, though the Senate failed to act before the fiscal year ended. The Office attempted to affect change not only in order to be prepared for the legislation's possible implementation, but also to be as responsive as it could to concerns raised by ACCORD and the various publics that the Office serves.

The signing of the North American Free Trade Agreement (NAFTA) also required the Office to create and implement new procedures and regu-

lations to deal with the first-ever instance of restoring copyright protection. Additionally, the Office began to prepare for a much more comprehensive restoration of protection under the legislation implementing the Uruguay Round of the General Agreement on Tariffs and Trade (GATT).

Of course, the demands of technology never cease, and the Office kept pace. The Register participated in the Administration's Information Infrastructure Task Force's (IITF) Working Group on Intellectual Property Rights, which met throughout the year. The working group published its preliminary green paper on "Intellectual Property and the National Information Infrastructure," and in September the Office filed comments in response to that report, highlighting particular areas of concern. Meanwhile the Office continued development of its Electronic Copyright Management System, which will permit online registration and deposit via the Internet, as well as providing rights and licensing information. The Office utilized the Internet for disseminating its computerized database of registration and recordation information and for informing the public of the latest regulations and other developments; by year's end approximately 1,000 users per week were accessing copyright information electronically via the Internet.

Finally, the Office faced a period of transition in its leadership. In November Ralph Oman retired as Register, and former Register of Copyrights Barbara Ringer, who had retired in 1980, became Acting Register, seeing the Office through its myriad challenges, giving her undivided and untiring attention to many legal and policy issues facing the Copyright Office and the copyright system itself. In August the Librarian appointed Marybeth Peters Register of Copyrights. Peters is a 28-year veteran of the Office and a former Policy Planning Advisor to the Register. Mary Levering served in a number of leadership roles during this

transitional year, before assuming in August the position of Associate Register for National Copyright Programs. Former General Counsel Dorothy Schrader was detailed to the American Law Division of the Congressional Research Service, where in August she became a Senior Specialist in law. A number of individuals served as Acting General Counsel throughout the year. Former Examining Division Chief Harriet Oler became Assistant Register for Legal Education and Special Programs, and former Receiving and Processing Division Chief Orlando Campos became Copyright Office Security and Safety Officer, creating the need for several Acting Chiefs in those divisions. Additionally, the Office lost 27 of its staff to early retirement incentives. All of these were experienced, long-term workers.

ELECTRONIC COPYRIGHT MANAGEMENT SYSTEM

In October 1993 the Copyright Office and the Library of Congress Information Technology Services announced collaboration with the Advanced Research Projects Agency (ARPA) and the Corporation for National Research Initiatives (CNRI) to develop a testbed system for an Electronic Copyright Management System (ECMS) as part of ARPA's basic research effort related to digital libraries. The purpose of the testbed is to determine the feasibility of receiving and processing copyright claims, materials, and transfer documents in digital form through the Internet together with information about licensing terms and conditions and the storage, retrieval, and use of digital materials in a global networked environment in accordance with terms and conditions established by the copyright owner. CNRI is the contractor, with funding provided by ARPA and the Library of Congress.

In March CNRI demonstrated the prototype system. Shortly thereafter, the Copyright Office established a policy steering committee to address the many policy questions and issues connected

with the project. The Copyright Office also organized a working group on larger operations, made up of division representatives and ITS staff, to address the many design and implementation issues. Topics discussed included the content of the files, the interface with existing systems, and the repository and rights management subsystems. Progress continued throughout the fiscal year toward a full testbed system. CNRI has developed a forms interface for entry of information, and ITS and the Copyright Office are working on a scripted version of the TX application form.

The ECMS testbed system is limited to journal articles in computer science submitted by five participating universities: Carnegie-Mellon University, Cornell University, the Massachusetts Institute of Technology, Stanford University, and the University of California at Berkeley. The testbed system will process claims and correspondence, interface with existing Copyright Office systems, and will include new subsystems to assure the integrity of deposited materials, and to provide access to the materials in accordance with the copyright law and within terms set by the copyright owner.

THE ADVISORY COMMITTEE ON COPYRIGHT REGISTRATION AND DEPOSIT (ACCORD) AND THE COPYRIGHT REFORM ACT OF 1993

The introduction of the Copyright Reform Act of 1993 in February 1993 prompted the Librarian of Congress to form the 20-member private sector Advisory Committee on Copyright Registration and Deposit (ACCORD). Concerned that aspects of the Reform Act, particularly the removal of current incentives to registration found in sections 411 and 412 of the Copyright Act, could harm the Library's collections and threaten the completeness of the copyright database, ACCORD looked for incentives to encourage registration and to strengthen the mandatory deposit system. The group, which made its report in September 1993

to the Librarian, who in turn made a report in October to Congress, made suggestions to strengthen mandatory deposit; to simplify registration, including the development of a new, short form; to expand group registration/deposit options; to restore the "rule of doubt" in the examining process; to include optional licensing/rights information on the forms; to revise the application, especially to make it clearer what information is needed; and other recommendations.

On October 19, the Librarian and Mary Levering, who was then acting for the Register, testified before the Senate that the Office and the Library would support the Reform Act, provided the recommendations of ACCORD were incorporated into the bill. Many of the ACCORD suggestions were incorporated into the House version (H.R. 897), which passed on November 20. The Senate, however, failed to act on the legislation.

The bill passed by the House would have done the following: (1) eliminate the current requirement to register U. S. and non-Berne Convention works with the Copyright Office before filing an infringement action (section 411(a)); (2) eliminate the requirement of timely registration with the Copyright Office as a prerequisite for statutory damages and attorney's fees (section 412); (3) strengthen the section 407 mandatory deposit provisions; (4) allow the Copyright Office to liberalize the registration and deposit requirements; (5) provide for a short and simplified application form; (6) include in the law itself a "rule of doubt" concerning the registrability of works; (7) require the establishment of a formal appellate procedure to review refusals to register claims; (8) provide that errors or omissions made in good faith or based upon reasonable reliance of counsel do not affect the validity of the registration and that no incorrect statement, even one made fraudulently, can invalidate the copyright, and (9) require the Library of Congress and the Copyright Office to prepare two studies, one on mandatory deposit (section 407) and the other on the impact of the changes in the reform act on the acquisitions of

the Library and the operations of the Copyright Office.

During the fiscal year, the Office worked on implementing, to the extent possible, the proposed legislation's provisions. A short registration form, "Form EZ," was drafted and disseminated for review by a group thought to be likely users of the form. The Office liberalized the deposit requirements for newspapers that are not selected by the Library. Finally, in response to criticism that the Office had wandered away from its rule of doubt and that it had adopted practices that may have overreached its statutory authority in determining what works are eligible for registration, the Visual Arts Section of the Examining Division undertook an intensive review and reconsideration of the copyrightability standards it applies to pictorial, graphic and sculptural works as well as works of architecture. The staff met to discuss principles, theories and practices regarding copyrightability in this area; particularly important was the standard enunciated by the Supreme Court in *Feist Publications, Inc. v. Rural Tel. Service Co.*, 111 S.Ct. 1282 (1991). The result is more consistency in applying the principles to the examination of claims as well as an anticipated reduction in the number of refusals to register and appeals from such refusals.

Phase II of ACCORD's work began with a planning meeting in October and two days of meetings each in January and March. The January meetings offered the group a panel of expert speakers on issues related to recordation of security interests in intellectual property, especially on the relative benefits of state versus federal recordation, a thorny issue originally dealt with in the Copyright Reform Act of 1993, but which was deleted to allow more time for study. Representatives from the American Bar Association's study group, which included not only intellectual property attorneys but banking/financial attorneys, and industry spokespersons from the motion picture industry, including producers and the talent guilds, and software developers explained the

issues they encounter in perfecting claims in intellectual property, illuminating a decidedly complex subject.

The other January meeting day was devoted to speakers from the Library's Office of Information and Technology Services (ITS) and the Congressional Research Service, and the Patent and Trademark Office, who discussed issues relating to copyright and the information highway and demonstrated some of the new technological advances. In March the group further delved into topics relating to the digital library and the impact of technology on the Office and Library and viewed a demonstration of the Office's Electronic Copyright Management System (ECMS). The final day was devoted to summing up the group's accomplishments and concerns to date and an exploration of possible future plans.

COPYRIGHT ARBITRATION ROYALTY PANELS AND THE CRT REFORM ACT OF 1993

On December 17, the Copyright Royalty Tribunal Reform Act became law. This law eliminated the Copyright Royalty Tribunal (CRT) and replaced it with ad hoc Copyright Arbitration Royalty Panels (CARPs) to be administered by the Library of Congress and the Copyright Office. Established in 1976, the CRT had been responsible for distributing royalties collected under the copyright law's compulsory licenses and statutory obligations. The CRT also had the responsibility of adjusting statutory royalty rates, which included rates paid by cable operators, record companies for the making of phonorecords, public broadcasters, satellite carriers, and manufacturers and importers of digital audio equipment and media. Since its inception, it had distributed close to \$1.4 billion in cable royalties, \$50 million in jukebox royalties, and \$10 million in satellite carrier royalties. Now, under the CRT Reform Act, the Librarian and the Copyright Office will administer and se-

lect CARPs and conduct preliminary work for distribution and rate adjustment proceedings.

The law went into effect immediately. It fell to the Copyright Office to devise the details of the panels' administration, everything from how the arbitrators should be selected to how much they should be paid to what code of conduct they must follow to all sorts of housekeeping details, such as how to close down the CRT offices and transfer its files, where the panels would meet, and how and with whom to staff a support office. The Office immediately established a CRT Transition Planning Group (later to become the CARP Implementation Task Group) to handle the many details involved in establishing the CARPs and shutting down the CRT.

As directed by the CRT reform law, the Office on December 22 adopted on an interim basis the regulations of the CRT, but, since the system was no longer the same, new regulations were proposed and published on January 18. The Office sought public input on the regulations and held an informal open meeting on February 1, at which the Librarian gave opening remarks, noting his intention to be personally involved with the CARPs. The Office sought guidance on five basic issues: termination of CRT business; organization of the CARPs; standards of conduct; precontroversy discovery, and various housekeeping details, such as where the CARPs would meet and their costs.

The proposed CARP rules covered organization of CARPs, access to meetings and records, conduct of proceedings and rate adjustments, and distributions. No ethical or financial standards for arbitrators were proposed; instead the Office sought comment on what would be appropriate.

The proposed regulations stated that the Office would look to CRT decisions and orders for guidance, but these decisions would not be binding on the Copyright Office. While concluded rate adjustments and distributions would be binding on the CARPs, proceedings pending before the Tribunal at the time of its elimination

were terminated; these matters would have to be resubmitted for consideration by the Office or CARPs.

On May 9 the Office published the CARP interim regulations that governed royalty distribution and rate adjustment proceedings under the Copyright Act through the fiscal year. These regulations established a selection process for CARP arbitrators. When a controversy exists among claimants over distribution of royalties or the need to adjust royalty rates arises, the Librarian selects two arbitrators from the master list, who in turn select a third from the same list to serve as chairperson; if the selected two cannot agree, the Librarian will choose the third arbitrator.

On May 11 the Office published the master list of arbitrators eligible for any 1994 CARP. Parties to a proceeding may object to listed arbitrators; to formulate objections the parties may contact the Office to review profiles of arbitrators and their respective fees. Any objection to a nominated arbitrator will be considered by the Librarian but will not, by itself, disqualify an arbitrator or diminish a candidate's chance of being selected.

A CARP arbitration may last up to 180 days. At that time, a written report is due to the Librarian setting the distribution percentages or applicable royalty rate, whichever is applicable. Within 60 days of receiving a CARP report, the Librarian, upon recommendation of the Register, will adopt or reject the panel's determination. If the Librarian rejects the report, the Librarian must examine the record and issue an order setting the distribution amounts or royalty rate.

The Office established administrative procedures for approving CARPs and processing claims and secured a special Post Office box for receiving mail relating to CARPs. In coordination with the Architect of the Capitol, the CARP Implementation Task Group worked on developing a hearing room and arbitrators' work areas. CARP operation is the responsibility of the General Counsel. The staff will be part of that Office.

AUDIO HOME RECORDING ACT OF 1992 ("AHRA")

On February 1 the Office issued interim regulations for filing quarterly and annual statements of account reflecting the distribution of digital audio recording devices or media under the Audio Home Recording Act of 1992 ("AHRA"). These regulations supersede the interim regulations issued on February 22, 1993.

AHRA requires manufacturers and importers to pay royalties into the Copyright Office on digital audio recording technology (DART) devices or media distributed in the United States. Originally, DART royalties were to be distributed by the CRT to interested copyright parties who file claims in January and February each year. Now the royalties will be distributed through the CARP system. The CRT Reform Act gives the Office responsibility to ascertain by March 30 each year whether controversies exist among claimants as to the proper distribution of digital audio royalties.

In 1993 the CRT made an initial finding that there were controversies concerning 1992 DART royalties in both the Sound Recordings and Musical Works funds. On November 29, 1993, before its demise, the CRT consolidated the 1992 and 1993 Musical Works funds and suspended the filing date for the 1992 Sound Recordings fund proceeding.

On March 1 the Office sought to begin anew the 1992 and 1993 DART royalty distribution proceedings. The Office published a notice of inquiry asking claimants expecting to participate in a CARP proceeding to file a notice, as required by regulation, stating how much is in controversy in each subfund with a brief narrative justifying the claim. The Office also sought comment on the advisability of consolidating the 1992 and 1993 DART distribution proceedings. Additionally, the Office announced a three-month delay in meeting DART deadlines for determining existence of controversies and distributing royalties not in controversy. The delay was due to the complexity of

abolishing the CRT and establishing the CAPP system.

On May 16 the Copyright Office published for claimants to the 1992 and 1993 DART funds a notice of commencement of a 30-day period to file precontroversy motions or objections, including objections for cause to nominated arbitrators. Although the parties indicated that there were still some unresolved controversies in each of the subfunds, instead of requesting immediate initiation of a CARP proceeding, they filed a joint motion requesting that the Office consolidate the 1992 and the 1993 DART distribution proceedings with the 1994 DART distribution proceedings and defer all consideration of DART distributions until 1995.

On July 13 the Office published a notice of the decision to consolidate the 1992, 1993 and 1994 DART distribution proceedings, expected to begin in 1995, and announced a public meeting, which was held on September 27, to discuss evidence for distribution of DART royalties.

NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)

The North American Free Trade Agreement (NAFTA) was concluded between the United States, Mexico and Canada on December 8, 1993, and entered into force on January 1, 1994.

NAFTA and its implementing legislation included the possibility of restoring copyright protection to motion pictures (and works embodied in those motion pictures) first fixed or published without required copyright notice in Canada or Mexico between January 1, 1978, and March 1, 1989. The Office notified the public of the provisions of NAFTA on January 10, and on March 16 the Office published interim regulations for restoring copyright under NAFTA for eligible motion pictures and their contents.

Eligible motion pictures or works included in those motion pictures are entitled to receive U.S. copyright protection for the remainder of the term

to which they would have been entitled had they been published with the required notice. Owners of copyright in such works have between January 1, 1994, and January 1, 1995, to file with the Copyright Office a statement of their intention to restore protection in the United States. If a complete and timely statement of intent is filed on or before December 31, 1994, protection will be restored effective January 1, 1995. After that date, the Office will publish in the *Federal Register* a list of the qualified works for which complete statements of intent have been filed. From the date of publication of that list, U.S. nationals and domiciliaries have a one-year grace period from liability for unauthorized exploitation of restored works acquired before the effective date of the Act. An Office task force met throughout the year to deal with all the issues.

The NAFTA legislation made a further change in the copyright law; it made permanent the grant of a rental right in sound recordings, previously set to expire in 1997.

GENERAL AGREEMENT ON TARIFFS AND TRADE/TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (GATT/TRIPS)

On December 15, the "Agreement on Trade Related Aspects of Intellectual Property" was adopted in the framework of the Uruguay Round of negotiations under the General Agreement on Tariffs and Trade (GATT/TRIPS); it was signed on April 15. Implementing legislation was introduced by Sen. DeConcini on August 5 (S. 2368) and by Rep. Hughes on August 8 (H.R. 4894) and enacted at the close of the 103rd Congress.

GATT/TRIPS and its implementing legislation would automatically restore copyright protection in all works of the World Trade Organization and Berne Union members that fell into the public domain in the United States because of failure to comply with one or more copyright formalities required under previous versions of the copyright

law or because the work was from a country with which the United States did not have copyright relations at the time of the work's publication. The legislation also would provide civil and criminal penalties for unauthorized creation and trafficking in "bootleg" copies of sound recordings and videos of live musical performances.

Other copyright issues addressed in the TRIPS text include: compliance with substantive provisions of the 1971 text of the Berne Convention; protection for computer programs as literary works; protection for compilations of data and materials that meet the originality standard for selection and arrangement; rental rights for computer programs and sound recordings and for cinematographic works where rental would lead to widespread copying; a term of protection of life plus 50 years, with at least a 50-year term for works for hire, producers of sound recordings and performers; application of the retroactive provisions of the Berne Convention (Article 18) to sound recordings; and exceptions to exclusive rights must generally be limited to special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interest of the right holder.

Additionally, there are strong enforcement and dispute resolution provisions. For the United States there are a number of disappointments including the language of the national treatment provision, the failure to provide a parallel importation right, failure to recognize corporate authorship, failure to deal with "videograms," and lack of provisions on conflicts of laws or contract rights.

OTHER LEGISLATIVE DEVELOPMENTS

The Satellite Home Viewer Act of 1994

The Satellite Home Viewer Act of 1994 passed the House and Senate on October 4, just after the close of the fiscal year, and was signed by the President October 18. It extended for another five years the satellite carrier compulsory license con-

tained in section 119 of the Copyright Act, which was due to expire December 31. Section 119 permits satellite operators to retransmit over-the-air broadcast signals to backyard dish owners under a compulsory license. The new legislation extends the license until December 31, 1999, and authorizes an arbitration proceeding in 1996 to set new statutory royalty rates. The law also includes wireless cable operators in its definition of a cable system, for the first time permitting them to operate under the cable compulsory license (section 111 of the Copyright Act).

The Copyright Office previously had decided by regulation that wireless operators fall outside the definition of a cable system. The Office continued to receive royalty statements filed by wireless operators under the cable compulsory license and twice extended the effective date of its cable definition decision in order to give Congress time to establish a compulsory license for wireless operators or to reform the cable license.

Public Performance in Sound Recordings

Representatives of copyright owners in sound recordings approached the 103rd Congress with legislation that would have granted an exclusive right under section 106 of the Copyright Act in public performances that occur via digital transmissions. Although the proposed right was limited, it was controversial. The original bills, H.R. 2576, introduced by Rep. Hughes, and S. 1421, introduced by Sen. Hatch, were subject to criticism and extensive amendments were proposed by the various interested parties; no action was taken this Congress.

REGULATORY ACTIVITY AND POLICY ANNOUNCEMENTS

Fee Increases

Fiscal year 1994 began with a severe budget crunch for the U.S. Copyright Office. Revenue

projections were not being met by actual receipts and congressional funding was reduced. Fee income had declined because of the general economy, the increase in group registrations, and a reduction in renewal registrations, the latter due to passage in 1992 of automatic renewal and the 1991 fee increase.

Congress appropriates about a third of the Copyright Office operating budget each year; the remaining two-thirds come from fees charged the public for services provided. In November 1993, an Office-wide task force began analyzing current operating costs and studying whether some fees charged by the Office needed to be adjusted to cover the actual costs of providing services. The task force studied statutory fees (those set by law) and discretionary fees (those the Register may adjust under section 708(a)(10) of the Copyright Act).

On July 28 the Office published in the *Federal Register* two related regulations with a request for comments. One proposed interim regulation concerned fee adjustments for certain discretionary services; proposed fee increases were for full-term storage of copyright deposits and for special handling of copyright registration and other expedited services. This regulation went into effect on September 26. The second proposal was a fee schedule for establishing, providing, and maintaining deposit accounts. The Copyright Office asked for comments on the deposit account fees by September 26 but extended that comment period until November 22, 1994, in order to give deposit account holders more time to comment on the proposed changes.

Cable Compulsory License – Major Television Market List

The 1992 Cable Television Consumer Protection Act directed the Federal Communications Commission (FCC) to update the major television market list contained in section 76.51 of the FCC cable carriage rules. On August 12 the Copyright

Office issued a policy decision, effective immediately, reaffirming its 1987 policy decision that accepted the FCC's market redesignation for purposes of the copyright cable compulsory license. The Office declined to take a position on the possible copyright effect of a future reranking of major television markets.

Copyright Office Establishes New Post Office Boxes

On April 12 the Office informed the public that it had established two new post office boxes to facilitate timely receipt of mail from copyright owners and users that demands immediate attention, such as litigation requests, Freedom of Information requests, comments to the Office on rulemakings and studies, and to sensitive mail relating to CARP proceedings. The *Federal Register* announcement detailed the specific kinds of mail that can be addressed to these new post office boxes, which are outside the Copyright Office mail system and located in southwest Washington, D.C.

COPYRIGHT OFFICE REPORTS

Report on Nonprofit Lending of Computer Software

The Copyright Office delivered a report to Congress on March 31 on the lending of computer programs by nonprofit libraries. This report, which was mandated by the Computer Software Rental Amendments Act of 1990, required the Office to advise Congress on whether the law has achieved its intended balance and purpose. The software rental amendment provides that nonprofit libraries may lend computer programs for nonprofit purposes, provided that each copy lent has affixed to the packaging containing the program a warning of copyright specified by the Copyright Office. Input for this study was solicited through a notice of inquiry that was published in the *Federal Register* on July 13, 1993. Twenty-nine comments

representing a broad range of software, library and educational interests were received. Responses were somewhat disappointing; the Office received little concrete evidence of the policies and practices of libraries and educational institutions. Thus, the Office was not able to answer the question: "Does lending increase unauthorized copying of software?" The Office proposed a follow-up study that would include a survey of borrowers.

Waiver of Moral Rights in Works of Visual Art

The Copyright Office is conducting a study on waivers of moral rights in visual art under the Visual Artists Rights Act of 1990 (VARA), which gives artists of certain works the rights of integrity and attribution in copies of their work. Integrity is the right to prevent any distortion, mutilation, or other modification that would be harmful to the reputation or honor of the artist. Attribution is the right to claim authorship or to refuse authorship if a work has been modified against the artist's wishes. The rights granted by VARA may be waived if the artist expressly agrees to such waiver in a written instrument, and Congress asked the Copyright Office to submit both an interim report (December 1, 1992) and a final report by December 1, 1995, on the extent to which visual artists waive their moral rights. In preparing the Interim Report the Office sought public comments through a notice of inquiry published in the *Federal Register*, but did not hear from many artists. Therefore, the Copyright Office developed a survey intended for artists, art groups, lawyers, agents, art groups and others who work with visual artists, which, with the cooperation of many art-related organizations, is being distributed to thousands of artists and organizations nationwide.

Duration of Protection Study

The Office held a hearing on September 29, 1993, to gather information on the question of whether the U.S. copyright law should be amended to ex-

tend the duration of copyright protection. While copyright owners who testified supported an extension to life plus 70 years and an additional 20 years for works made for hire and works copyrighted before January 1, 1978, many comment letters were received opposing any extension. On October 21 the Copyright Office published a notice extending the comment period for filing written comments until November 30. Over 200 comments were received, but due to budgetary restraints the study is on hold. However, should legislation be introduced, the information gathered will be used by the Office in any submission to Congress.

INTERNATIONAL ACTIVITY

Berne Protocol

The purpose of the protocol to the Berne Convention is to address a number of important areas of copyright where the application of the 1971 Paris Act of Berne is either unclear or the subject of dispute. These areas include computer programs, databases, distribution rights, including the right of importation, rental rights, concepts of "public communication" of works, the place of compulsory licensing in emerging satellite telecommunications systems, enforcement of rights, and the scope of the Berne national treatment obligation. The United States and other countries are assessing the protocol in view of the TRIPS Agreement. The fourth Committee of Experts Meeting was scheduled to be held in Geneva from June 6 through June 10. However, the United States requested a postponement of the meeting. An extraordinary session of the Assembly of the Berne Union was convened in April to discuss the U.S. request; the meeting was postponed until December 5-9, 1994.

Performers and Producers of Sound Recordings - New Instrument

Many countries protect sound recordings under neighboring rights laws and not copyright.

The United States, after failing to win support to include increased protection for sound recordings in the Berne protocol exercise, sought means to provide a higher level of protection for these works and a way to bridge the copyright and neighboring rights systems. The result is the possibility of the creation of a new treaty on the protection of performers and producers of phonograms. Key issues include the scope of the protected persons and entities, the scope of the rights and limitations as well as a requirement of broad national treatment, and protection for existing sound recordings (i.e., retroactivity). Then-Policy Planning Advisor Marybeth Peters and then-Register of Copyrights Ralph Oman were part of the U.S. delegation to the Committee of Experts meetings in Geneva in November. The next meeting, scheduled for June 13-17, was postponed until December 12-16, 1994.

Other International Meetings:

Former Register Ralph Oman and Assistant General Counsel Marilyn Kretsinger were in China from October 7-20. The trip was set up by the National Copyright Administration of China. Oman and Kretsinger gave lectures on U.S. copyright law and discussed the importance of copyright protection with authors, publishers, educators, and judges.

Kretsinger was a U.S. observer to the Fourth Session of the Committee of Experts on the Development of the Hague Agreement Concerning the International Deposit of Industrial Design held in Geneva January 29 - February 5.

On January 17-20, Peters served as a member of a U.S. intellectual property delegation in Tokyo, Japan. The group met with Japan's Agency for Cultural Affairs to discuss Japan's study of the scope of computer program protection and on the possibility of adopting a law allowing decompilation of software. During that trip the delegation also met with representatives of the European Union (EU) to discuss various subjects

including GATT/TRIPS, WIPO activities (Berne Protocol and New Instrument), and bilateral issues. In Japan, in March in Brussels and again in June in Paris, Peters attended meetings with representatives of a number of industrially advanced countries to discuss moving the process of international copyright harmonization forward by attempting to resolve differences among themselves. Peters also attended the Worldwide Symposium on The Future of Copyright and Neighboring Rights held at the Louve in June.

Principal Legal Advisor Charlotte Douglass was a member of the U.S. delegation to the Eleventh Session of the WIPO's Permanent Program for Development Cooperation Related to Copyright in Geneva, May 24-27, where she reported on U.S. Copyright Office assistance to developing countries during the past two years.

The Governing Bodies that administer WIPO met in Geneva from September 26 - October 4, 1994. Douglass was the Copyright Office's representative on the U.S. delegation. On the agenda for its 25th Series of Meetings was the nomination of a Director General of the WIPO by the Coordination Committee, one of its seven Governing Bodies. The U.S. delegation proposed the name of Dr. Arpad Bogsch, former Copyright Office legal advisor and WIPO's current Director General, for a two-year term. The Coordination Committee nominated Dr. Bogsch by consensus. The Committee on the Berne Union considered the provisional documents that were prepared by the WIPO International Bureau for the December Committee of Experts on a Protocol to the Berne Convention. The Berne Committee agreed to accept the provisional documents subject to modifications in the text concerning computer programs; all provisions on decompilation were deleted.

International Copyright Institute (ICI)

The Copyright Office's International Copyright Institute was created by Congress in 1988 to

"promote improved copyright protection for U.S. creative works abroad." This institute provides training for high-level officials from developing and newly industrialized countries. It creates contacts for foreign and U.S. government officials as well as U.S. copyright experts that can be utilized in the resolution of bilateral and multilateral copyright problems. Since its inception, the ICI has conducted two major programs each year and provided training for more than 160 officials from more than 90 countries. This past year only one program was held; that program, held in December 1993 and cosponsored by WIPO, focused on the former Soviet Republics.

COPYRIGHT OFFICE OPERATIONS

Registrations and Service

During the fiscal year, the Office registered 528,755* claims to copyright and mask works; 550,100 items were cataloged. The Office provided in-person assistance to 26,677 individuals who visited the Office, answered 105,479 inquiries by correspondence, answered 323,042 telephone inquiries, for a grand total of 455,198 for direct reference services.

Copyright Automation Group

The Copyright Automation Group participated actively on the Electronic Copyright Management System described above, providing technical input and guidance to CNRI and ITS throughout the year. The scanning subsystem of the Copyright Imaging System (CIS) was put into full production mode. More than 320,000 registrations were processed and certificates mailed during the year using the system, which replaces the

hand stamping of registration numbers and photocopying of certificates. Use of the system started small but grew steadily as staff gained proficiency. Approximately 80 percent of the work is now being scanned. By the end of this calendar year, all registrations are expected to be processed through the system. The retrieval subsystem has also been available for staff use and will soon be made available to the public. ITS is working on improving the sign-on procedures, and signs are being prepared to assist the public in how to use the system. A task group composed of representatives of all affected divisions is overseeing progress. While CIS is a complex system, the implementation progressed very well. The contractor delivered all of the required components, follow-up work has been relatively minor, and increased use is being made of the system.

A preliminary design for an image-based documents system was prepared and presented to the Copyright Office management team. This grew out of a need for a more efficient procedure for recording assignments of copyright and other documents and the expected receipt of large numbers of filings resulting from legislation implementing the Uruguay Round of the General Agreement on Tariffs and Trade. Under the proposed design, documents would be scanned to optical storage media instead of the present microform media, and optical character recognition technology would be used to streamline the creation of catalog entries. Documents could be processed faster and with less keyboarding, and the system would be interfaced with the existing cataloging system, COPICS. Next steps are to define detailed requirements and obtain preliminary pricing information from potential vendors.

A project was initiated to replace the aging microcomputers used for correspondence processing in the Examining Division. The Copyright Office is now a member of the Library's Information Technology Working Group and through that channel obtained funding for 69 new workstations and two local area network servers from

* Approximately 65,000 additional claims were examined but were not assigned registration numbers due to conversion of the numbering operation from manual hand stamping to an automated optical disk system.

the fiscal year 1994 workstation budget. Requests were submitted to obtain funding for the remaining 71 workstations and two additional network servers from the fiscal year 1995 workstation budget. The new workstations will include IBM ValuePoint microcomputers with low radiation, ergonomically designed monitors. Installation will take place during next fiscal year.

A project was initiated to install Premises Distribution System wiring throughout most of the Copyright Office space on the fourth floor. This network wiring will provide access to Library information systems from a staff member's microcomputer and eventually access to local area network systems for improved communication and sharing of files. Installation is near completion and requests were submitted to begin connecting staff workstations. The Examining Division will be a big beneficiary of this effort when it receives the new workstations and the network servers. The wiring will eliminate the need to transfer files between the sections and the correspondence units via diskette, resulting in a faster and more efficient process.

Another local area network server was installed bringing the total in the Copyright Office up to four. Approximately one fourth of staff in the Copyright Office now have access to servers, which opens up new opportunities for sharing of data among Office staff and with the other 33 network servers throughout the Library. A networked CD-ROM copy of *Nimmer on Copyright* was installed, allowing the Office to reduce the number of subscriptions from 34 to 8, a substantial reduction in the cost combined with improved online access and a reduction in the number of hours needed to file supplementary materials. The Office is participating in a Library-wide study group that is defining the tasks and activities involved in local area networking. The objectives of the group are to identify those tasks that can be included in appropriate position descriptions for local area network administrators and to develop a set of standard operating procedures for local area networks throughout the Library.

Cataloging Division

The Cataloging Division completed its multi-year effort to revise all the rules under which it creates the record of copyright registrations. The Rules Review Group issued the new streamlined rules in June 1994, replacing the bulky and outmoded rules that had been a source of frustration over the years. A single binder containing the new rules was issued to each cataloger and the training and implementation of the new rules, bargained with the appropriate labor organizations, was completed during the last few months of the fiscal year. The cataloging product remains very similar to that of years past, but significant improvements have been made in the ease with which the record is created and the uniformity of the record from a wide variety of formats. These new rules will allow the division to increase its flexibility in handling unexpected surges in receipts by fully utilizing the capabilities of the staff by using a single set of rules.

Installation of new personal computer based workstations for all catalogers was scheduled. Impact bargaining with the appropriate labor organizations was in place by the end of the fiscal year, and the actual installation is awaited. The process of introducing these workstations was a fully consultative process, involving staff at all levels of testing and experimentation, including a questionnaire on various problems discovered during testing. Appropriate changes were made by programmers in order to accommodate the needs of the division and staff. The new workstations and the local area network that will be installed concurrently are expected to greatly reduce time lost in production activities while increasing personal options available in the past to only those staff members assigned a personal computer. The introduction of optical disc processing in the Registration Processing Unit also served to introduce time savings by allowing catalogers to directly retrieve application information without a trip to the application storage area.

In the Documents Unit, the staff reduced the workload on hand by 75 percent during the fiscal year and reduced turnaround processing time by 70 percent. In addition to an all-out effort by staff to provide more timely public service, the use of the document cover sheet—which allows the staff to process from information provided by the remitter, as opposed to having to search through the document—has reduced document processing time as the cover sheet has gained acceptance among document remitters. Introduced in January 1993, the documents cover sheet use now accounts for 70 percent of weekly document receipts.

Examining Division

As a result of concerns raised in the ACCORD meetings, the Division reassessed its role in the examining process and continued to explore and implement ways to liberalize and simplify many of its practices and procedures in order to provide better service to the public but without sacrificing the integrity of the registration record.

A major change was made in the examining practices for architectural works to allow the registration of interior design only, without any additional element of exterior design, where the interior design is sufficient in itself to sustain a claim.

The division liberalized its screen display practices (1) to forego the examination of screens deposited with a computer program claim when the authorship is broadly asserted, (2) to permit all screens to remain with the computer program deposit even though some of the screens may not be copyrightable, and (3) to accept a manual containing reproductions of screens as an appropriate deposit for the screens.

CD-ROM receipts continued to increase for all classes of works. After several years of working with the CD-ROM deposit regulation, the division proposed changes that will simplify the deposit for the applicants, clarify the existing regulation,

and encompass other types of works embodied in similar digitized formats.

The Literary Section conducted a survey and developed written guidelines for examining claims in legal publications registered on Form SE/Group. These guidelines expand the existing "scholarly works" category to include legal works so that a space 6 statement often will not be required, thus enabling most legal works to use Short Form SE or Form SE/Group.

Under Project Remitter, the Performing Arts Section began assigning one or more company applicants to an individual examiner. The companies for this project were initially selected on the basis of the volume of claims submitted and the frequency of correspondence required. The examiner handled all registration problems from his or her assigned companies. This contrasted with the routine approach of having examiners handle only the claims initially distributed to them. After months of working under this project, it is clear that the project has been highly successful in reducing correspondence and achieving better service to our frequent applicants.

Another outreach project initiated in the Performing Arts Section was the team handling of claims. On several occasions during the year, the section received a very large number of claims from the same applicant. For more expeditious processing, a team was assigned to examine the claims and handle the resulting correspondence. The approaches used showed creative flexibility. In one case, the team invited the attorney handling the case to spend several days in the office to resolve the problems identified in examination. In another case, the team pooled all of the problems and had one examiner correspond. A technician on that team numbered the cleared claims to enable them to move through as a group.

The Visual Arts Section's intensive review and reconsideration of the copyrightability standards it applies to all areas of works in the visual arts was described earlier in this report.

Approximately 1,150 group registration for

daily newspapers (Form G/DN) claims were received and processed this fiscal year. In concluding its work, the G/DN task group prepared written guidelines and training materials that were used to train the literary technicians who subsequently handled this entire category of claims. In June representatives from all units that process G/DNs met to assess the effectiveness of processing this relatively new category of claims. All reported positive results, and the Serial Division of the Library expressed appreciation to the Copyright Office for the approximately \$100,000 in savings it is realizing in subscription costs.

Receipts for renewals registrations continued to drop during this year, the second year of the automatic renewal provision, with an estimated decrease of approximately 7,000 fewer receipts in this fiscal year than in the last. For those applicants who did not make an original registration prior to the 28th year of the copyright term, more chose to file a renewal registration with an accompanying addendum, in preference to making an original registration. Receipts for Visual Arts continued to increase for most categories of works including architectural works. Receipts for individual literary works decreased, but receipts of serials continued to rise, due to publishers' interest in group registrations.

Information and Reference Division

Technological advances in automation and electronic communication enabled the Information and Reference Division to improve service to the public this fiscal year. Access to the latest information on Copyright Office actions, regulations, and the most recent editions of most of the Office's information circulars was provided via the Internet to the Library of Congress electronic informational network, MARVEL. In an effort to increase public awareness of this service, the division created a new publicity flyer explaining how to access this electronic information and the copyright online catalog files.

The Certifications and Documents Section utilized new automation hardware and software to electronically request retrieval of deposits and records from the Washington National Records Center through their Center Information Processing System. This system became fully operational during the first quarter of the year, resulting in a dramatic reduction in the amount of time needed to retrieve records from storage and eliminating the need for paperwork by the staff.

The impact of technological improvements was also felt with the automated interactive telephone answering system, CONVERSANT, albeit not without its share of problems. The vendor installed upgraded hardware and software for the system in late October, with full conversion to the new system the first week of November. Unfortunately the performance and dependability of the upgraded system was erratic, providing the public with poor or limited telephonic access for periods of time. After the vendor made a series of software and hardware corrections, the system was functioning without any major problems by July and providing the public with reliable telecommunication access to the forms request "hot line" and the programmed informational messages.

In an effort to improve the Office's public outreach effort, the division replaced the aging portable informational exhibit. Through the cooperative efforts of staff in the Publication and Information Sections an exhibit was designed that brings a new look to the Office's public image and at the same time conveys information about the mission of the Office. The Information Section used the new exhibit for the first time in July at the Patent and Trademark Office's "Inventor's Day."

As part of the continuing effort to improve the security and insure the integrity of the records of the Copyright Office, the division implemented a public registration system in the Records Maintenance Unit in August. This system identifies the public users of the Copyright Office records, providing critical information not previously avail-

able. The division took additional steps to improve security in the Records Maintenance Unit: lockers were installed for public use, security mirrors were installed in the public work area, and a security alarm was installed at the entrance to alert the staff of a patron's presence.

During April the division received notification of the proposal to utilize a section of the Copyright Card Catalog area to accommodate offices and a hearing room for the Copyright Arbitration Royalty Panels. Throughout the rest of the year the division office and the Reference and Bibliography Section worked on various plans for reconfiguring the catalog card cases. As part of this process cracks in a portion of the walls and ceiling in the card catalog area were discovered. In June some 112 of the card cases were temporarily transferred out of the card catalog area to the hallways of the fourth floor while the Architect of the Capitol's (AOC) engineering force investigated the extent and cause of the cracks. After several months of study, the AOC determined that the weight of the card cases was not related to the cracks, and the card cases were returned. This transfer of card cases adversely impacted the production of the staff during that period, as it took longer to complete searches.

Licensing Division

The Copyright Royalty Tribunal (CRT) Reform Act of 1993 was enacted on December 17. The Licensing Division acted as liaison between the CRT and the Library in order to begin the lengthy process necessary to transfer the material records to the Library of Congress. The division designed and printed a self-mailer circular and directed it to the constituencies of the CRT to alert them about this transfer of authority and to explain how the Library would administer the functions of the now defunct CRT. The division worked together with the Register's Office and the General Counsel's Office to develop procedures, practices, and regulations to implement

these new responsibilities. Under a strict deadline, the division developed the financial disclosure statement form to be used by qualified arbitrators who availed themselves for selection to serve on a CARP for calendar year 1994.

The distribution of royalties to copyright owners, previously conducted by the Copyright Royalty Tribunal, is now handled by the Licensing Division through its Fiscal Section. The division made its first distribution under the Audio Home Recording Act of 1992, a partial distribution of the nonfeatured musicians subfund and the nonfeatured vocalists subfund covering both 1992 and 1993 royalties to an escrow agent, on July 28. An 80 percent partial distribution of 1992 cable royalty fees amounting to a little over \$157 million dollars is scheduled for October 1994. To prepare for this 80 percent distribution, a statistical survey was conducted to determine the percentage breakdown of cable royalty fees submitted by fund type—3.75 percent fees, base rate fees, and syndicated exclusivity surcharge fees. A new automated report covering examined cable statements of account was utilized for part of the survey, but parts of the report had to be compiled manually since portions of the division's automated system in this area are as yet uncompleted.

The division continued to be actively involved in establishing procedures in implementing the Audio Home Recording Act of 1992. During the year, the division designed the DART/A Annual Statement of Account form for filing by importers and manufacturers of digital audio recording devices and media. When filed, these statements are not public records, but are deemed confidential since they may contain trade secret or proprietary business information. The first DART/A forms were filed with the division in March 1994. The division revised the DART/Q Quarterly Statement of Account form pursuant to comments from interested copyright parties and from information obtained during a public meeting.

Receiving and Processing Division

During the year the Division processed over 615,000 claims for registration and transferred \$13,952,120.49 to the U.S. Treasury.

The Mail Units and the Data Preparation and Recording Unit eliminated all work on hand and became current on July 15, and August 24, respectively, eliminating a backlog of claims representing approximately \$1,000,000 in unprocessed filing fees. New procedures were implemented to allow the units to balance their work, to more equitably share the workload, and to prevent the recurrence of this year's backlog problems. On several occasions members of the Library's Ergonomics Committee analyzed the mail units. Staff were videotaped in the performance of their work. These videotapes were then studied to determine potential hazards and unsafe working habits of the staff. As a result, new spring bottom tubs were purchased, and a request was made to upgrade all mailroom workstations in the coming fiscal year.

The Data Preparation and Recording Unit was able to start using the long-awaited G/DN fee service code. This new category of work was developed in a cooperative effort with the Examining Division, the Materials Control Section, and the Copyright Acquisitions Division. The unit resolved many of the SE Group registration processing problems, again through cooperation with the Examining Division. The unit made modifications to the oversized material processing areas, giving attention to ergonomic concerns. Handling procedures for all compact discs (CD's) were changed in order to tighten security. Two changes recommended by the Inspector General's Office to increase security in handling currency were implemented, resulting in changed procedures affecting the Public Office, the Mail Units, and Data Preparation and Recording Unit.

In the Accounting Unit installation of the first PC with accounting software was completed with plans made for a more automated system of book-

keeping in the near future. This included networking positions in the Accounting Unit so daily summaries can be kept online and be made instantaneously available, with reports printed from online information or even electronically communicated. Throughout the year, additional use was made of the U.S. Treasury's CASHLINK SYSTEM for monthly transfers and to update the budget clearing account. In addition, the unit took steps to modify and more efficiently process "no funds" cases and brought about changes in notification and handling of deposit account holders who habitually allow their accounts to run low of funds. One hundred and seventy new deposit accounts were established, bringing the total to approximately 2,800.

In July, as a cost cutting measure, the Office entered into a contract with American Business Information Systems, Inc. (ABIS), for the preparation and mailing of monthly statements to the division's deposit account holders. Each month the division forwards a computer tape containing the monthly activity for each account to ABIS. ABIS prints and mails the deposit account statements, eliminating a burdensome operation for the division.

JUDICIAL DEVELOPMENTS

Scope of Protection: Synchronization of Sound Recordings

The U.S. District Court for the Southern District of New York, in a case of first impression, *Agee v. Paramount Communications, Inc.*, 853 F. Supp. 778 (S.D.N.Y. 1994), held that Congress did not intend the Copyright Act to confer a synchronization right on the owner of copyright in a sound recording.

Defendant Paramount Pictures purchased a compact disc recording containing plaintiff's sound recordings and copied portions of two songs to make the audio track of a four minute segment of its prerecorded television program

known as "Caught on Tape." It timed the audio portion to visual images showing an unsuccessful burglary in Houston, Texas. Defendant integrated the segment into its "Hard Copy" program and transmitted it by satellite to independently owned and operated television stations for nationwide broadcast. It also transmitted a 20-second promotional commercial for broadcast the day before the program aired. The independent stations, who are additional defendants in this case, made their own copies of the television show and the commercial and broadcast both to the viewing public.

Plaintiff in part alleged violation of his exclusive copyright rights to reproduce the sound recordings and to prepare derivative works under the terms of §114(b). Defendants claimed that the use of plaintiff's sound recordings was a "performance" that is not protected by the Copyright Act and, further, that its use of plaintiff's phonorecords as background music for the television program did not create a derivative work.

Judge Constance Motley, writing for the court, agreed with defendants and granted their motion for summary judgment. She held that defendants could copy Agee's sound recordings, so long as the copying did not include an unauthorized sale and public distribution of the works to the general public. By this decision, the court limited the sound recording copyright owner's reproduction right to an anti-piracy right. Moreover, it found that Paramount's satellite transmission of "Hard Copy" to the independent stations and their subsequent transmissions to the public were legitimate §112 ephemeral recordings.

Because §114 of the Copyright Act expressly gives the owner of copyright in a sound recording the right to control reproduction or duplication of that recording "in the form of phonorecords, or of copies of motion pictures and other audiovisual works, that directly or indirectly recapture the actual sounds fixed in the recording..." and because the reproduction right attached to a copyrighted sound recording is separate from the distribution right, the Copyright Office in its

amicus curiae brief maintained that the owner of copyright should have the right to control the synchronization of his or her recording with visual images to create a commercial television program. The case is on appeal before the Second Circuit Court of Appeals.

Originality: Harmony

Continuing the prevailing trend to expand copyright subject matter, the Southern District of New York, in another case of first impression, *Tempo Music, Inc., v. Famous Music Corp.*, 838 F. Supp. 162 (S.D.N.Y. 1993), held that the harmonization of a preexisting musical composition may be copyrightable as a derivative work.

The case involved a controversy between the estates of Duke Ellington and arranger Billy Strayhorn over Strayhorn's right to royalties from the instrumental version of the jazz classic "Satin Doll." The court held that Strayhorn's harmony was sufficiently original to be protectible by copyright and that the arranger's creativity in selecting from among the admittedly limited range of chords compatible with the composition's melody could meet copyright's originality requirement. "The choice of one particular harmonic relationship, such as the selection of secondary dominants in 'Satin Doll,' could be considered a creative choice," said the court. For copyright purposes, originality is found in the creative process rather than novel outcomes or results.

Originality: Rap Lyrics

Likewise, in *Tin Pan Apple, Inc. v. Miller Brewing Co.*, 30 U.S.P.Q.2d 1791 (S.D.N.Y. 1994), the court cited the "extremely low threshold" of creativity and denied defendants' motion for summary judgment. Plaintiffs' suit alleged infringement by defendants' Miller beer television commercial that used nonverbal vocal sounds "brrr" and "hugga-hugga" from plaintiffs' rap composition and sound recording "Stick

Em." Judge Haight based his holding on the view that a jury might find the sounds that served as lyrics in the Fat Boys' composition were sufficiently creative to warrant copyright protection. The court also acknowledged the "presumption of originality" conferred by the Office's registration of the musical work and the sound recording.

Originality: Derivative Works

The Southern District of New York found that "minuscule variations" to the design of public domain troll dolls lacked the necessary originality to qualify for copyright. *EFS Marketing, Inc. v. Russ Berrie & Co.*, 836 F. Supp. 128 (S.D.N.Y. 1993). In subsequent troll doll litigation, the same court held that defendant's two dimensional coloring book drawings of public domain dolls infringed plaintiff's books and activity pads illustrated by the same artist. *Modern Publishing v. Landoll, Inc.*, Copyright L. Rep. 841 F. Supp. 129 (S.D.N.Y. 1994). Noting the "dash" of originality required of protectible derivative works, the court rejected defendant's argument that copyright was available only for specific poses of the dolls. The similarity of defendant's works, even if it is attributable to the artist's style rather than to direct copying, constituted infringement where the artist had assigned copyright to the plaintiff.

Originality: Computer Programs

Applying the standard enunciated in *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991), to computer programs, the Northern District of Illinois held that a computer program composed of public domain subroutines may be copyrightable based on the original arrangement and selection of those subroutines. *Gnu Business Information Systems, Inc. v. Social Secretary, Ltd.*, Copyright L. Rep. (CCH) ¶127,199 (N.D.Ill. 1993), refused a motion for summary judgment and held that although the individual

subroutines of plaintiff's customized social stationery program may be unprotectible as the "most efficient method of obtaining the result desired," the arrangement as a whole may be entitled to copyright. Further, the court found that the fact that defendant's program was written in a different language from plaintiff's did not preclude a finding of substantial similarity; "It is analogous to the translation of a literary work."

Originality: Short Phrases

On the other hand, the Fourth Circuit affirmed a grant of summary judgment to defendant and refused copyright protection for the phrase "You Got the Right One, Uh-Huh" in *Takeall v. Pepsico, Inc.*, 29 U.S.P.Q.2d 1913 (4th Cir. 1993). Plaintiff ventriloquist Takeall, with his dummy "Scooter," claimed he had used the phrase as part of his act since 1984. In 1992, he registered the "words and narration" of his act. The allegedly infringing Ray Charles Pepsico commercials aired in 1991.

The court found the lower court was justified in finding insufficient evidence of copying and opined that "the disputed phrase fails to evidence the requisite degree of originality to entitle it to copyright protection and is a short expression of the sort that courts have frequently held uncopyrightable."

Ownership: Work Made For Hire

The Fourth Circuit remanded a Virginia case involving the issue of ownership of rights in a revised computer program in *Avtec Systems, Inc. v. Peiffer*, 805 F. Supp. 1312 (4th Cir. 1994). Looking to the Restatement 2d of Agency, the court employed a three-prong test to determine whether a program created by defendant while in plaintiff's employ was created within the scope of employment. Conduct is created within the scope of employment "only if a) it is of the kind [the employee] is employed to perform; b) it oc-

curs substantially within the authorized time and space limits; [and] c) it is actuated, at least in part, by a purpose to serve the master."

The appellate court found that the lower court erred in failing to determine ownership and attendant rights to make derivative works of the original work and in concentrating instead on the differing commercial purposes to which the two versions were put.

Fair Use and Parody

In *Campbell, AKA Skywalker v. Acuff-Rose Music, Inc.*, 113 S. Ct. 1164 (1994), a unanimous U. S. Supreme Court held that a commercial parody may be a fair use within the meaning of §107 of the Copyright Act. A parody of Roy Orbison's rock ballad "Oh, Pretty Woman" in 2 Live Crew's song "Pretty Woman" gave rise to the infringement action.

The Supreme Court overruled the Sixth Circuit's holding that the commercial nature of the parody caused it to be presumptively "unfair," that taking the "heart" of an original work is an unfair use, and that market harm is established by the commercial nature of the parody. Instead, the Supreme Court abjured the application of "bright-line rules" in favor of a traditional case by case analysis that balances the four statutory fair use factors in light of copyright's purpose of promoting science and the arts.

The high court's analysis of the first fair use factor, the purpose and character of the use, focused on whether the new work was "transformative"—whether it altered the original or merely superseded it. "The more transformative the new work, the less will be the significance of other factors, like commercialism, that may weigh against a finding of fair use," said the court.

The second statutory factor, the nature of the copyrighted work, was of little value in analyzing parody cases, in the court's view.

The third factor, the relative amount of the original work that was copied, should be ana-

lyzed in terms of the reasonableness of the copying in relation to the copying's purpose. Copying the first line of lyrics and characteristic bass riff, the "heart" of the original, may be reasonable, said the court because "the heart is also what most readily conjures up the song for parody and it is the heart at which parody takes aim." The court held the copying of lyrics not to be excessive for 2 Live Crew's parodic purpose, but remanded the case on the issue of possible excessiveness in copying the bass riff.

Finally, with respect to the fourth fair use factor, the effect of the use on the market value of the original, the Supreme Court found "unlikely" the chance that a parody would substitute for the original, because the works serve different market functions.

Because defendant failed to address the consequences of its use on the potential derivative market for a nonparody rap version of Orbison's song, it was not entitled to summary judgment.

Infringement: Registration as Prerequisite to Injunction

The Eighth Circuit held that registration was not a prerequisite to a grant of injunctive relief under 17 U.S.C. §502(a) in *Olan Mills, Inc. v. Linn Photo Co.*, 23 F.3d 1345 (8th Cir. 1994). Olan Mills sued for the unauthorized reproduction of its photographs. The appellate court ruled that the district court could grant permanent injunctive relief against the future infringement of its photographs and that, although registration is a prerequisite to suing for infringement under §411, the timing of registration is only significant with respect to the copyright owner's ability to recover statutory damages.

Infringement: Attorney's Fees

The Supreme Court, in a case appealed from the Ninth Circuit, *Fogarty v. Fantasy, Inc.*, 114 S. Ct. 1023 (1994), held that awards of attorney's fees

under §505 must be made by employing an "even-handed" approach as between prevailing plaintiffs and prevailing defendants. In either case, attorney's fees should be awarded only as a matter of the court's discretion. Relying on the legislative history of §505 and the policy underlying the statute, the court rejected a "dual standard" that awarded attorney's fees to successful plaintiffs but required prevailing defendants to prove that the suit was frivolous or brought in bad faith in order to receive attorney's fees. Rather, the court said, "a defendant seeking to advance meritorious copyright defenses should be encouraged to litigate them to the same extent that plaintiffs are encouraged to litigate meritorious infringement claims."

At the same time, the Supreme Court rejected petitioner's argument that the Copyright Act follows the "British Rule" and commands that the prevailing party automatically recover attorney's fees absent exceptional circumstances. Instead, an award is discretionary with the court. Although the high court declined to elucidate a precise rule or formula for making these decisions, it noted with approval some factors that may guide courts' discretion "so long as [they] are faithful to the purposes of the Copyright Act," including "frivolousness, motivation, objective unreasonableness (both in the factual and in the legal components of the case) and the need in particular circumstances to advance considerations of compensation and deterrence."

Infringement: Similarity

The Tenth Circuit, in an approach reminiscent of that used by the Second Circuit in *Computer Associates v. Altai*, 982 F.2d 693 (2d Cir. 1992), directed the district court to employ an "abstraction-filtration-comparison" test to decide the issue of infringement of plaintiff's "Design Flex" computer program in *Gates Rubber Co. v. Bando Chemical Industries, Ltd.*, 9 F.3d 823 (10th Cir. 1993). It offered six levels of declining abstraction from

which unprotectible elements should be filtered out: 1) the program's main purpose; 2) the program's architecture or structure; 3) operations modules and data types; 4) algorithms and data structures; 5) source code; and 6) object code. Level one is an unprotectible idea; levels five and six will always be protectible absent merger or scenes a faire. The intermediate levels—the structure, sequence and organization—must be judged on an ad hoc basis, and the court must compare to determine whether the protectible portions that have been copied qualitatively comprise a substantial part of the original work. The case was remanded for further analysis.

Willful Infringement

In *Wildlife Express Corp. v. Carol Wright Sales, Inc.*, 18 F.3d 502 (7th Cir. 1994), the Seventh Circuit affirmed the district court's finding of willful infringement and awarded statutory damages of \$50,000 for each infringement. The case involved infringement of animal-styled soft sculpture duffle bags. Evidence showed that defendant's supplier had access to all four bags at an international toy fair and had examined the bags carefully for approximately 15 minutes. The court found substantial similarity between the parties' products.

Although the defendant received both a Notice of Re-delivery from the U.S. Customs Service alleging infringement and a claim of infringement by plaintiff, it continued selling the bags.

Applying a "clearly erroneous" standard of review to the district court's determination, the appellate court affirmed the finding of willful infringement based upon the infringer's knowledge that its conduct was infringing or its reckless disregard of the copyright owner's right. Defendant's failure to inquire or to conduct a check of plaintiff's copyright, as well as its continued sales after plaintiff's demand letter and institution of suit, were acts of reckless disregard and willful infringement in the court's view.

Regulatory Review: Satellite Broadcasters

Satellite Broadcasting and Communications Association of America v. Oman, 17 F.3d 344 (11th Cir. 1994), sought to invalidate Copyright Office regulations that denied satellite broadcasters the benefits of cable licenses on grounds that they are not "cable systems" within the meaning of §111(f). The 11th Circuit reversed the district court and found the regulations were neither arbitrary nor capricious.

The Copyright Office's regulation ruled that satellite carriers were not "cable systems" because they did not "receive and transmit signals from within a single state" as required by §111(f) and because they were not the localized retransmission services contemplated by the statutory compulsory licensing scheme.

Although the circuit court had adopted a contrary interpretation of the regulatory scheme in *NBC v. Satellite Broadcast Networks*, 940 F.2d 1467 (11th Cir. 1991), it deferred to the Copyright Office's statutory interpretation as one "based on a permissible construction of the statute." Following *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), the court said it must "defer to an agency statutory interpretation that is at odds with circuit precedent, so long as 'the agency's answer is based on a permissible construction of the statute.'" Since the court's earlier decision was not based upon the statute's clear meaning, but on statutory inferences and policy determinations, it should defer to the Copyright Office's construction. Excluding satellite carriers from the term "cable systems" was "neither arbitrary, capricious, nor contrary to the statute's 'clear meaning.'"

Statutory Review: Cable Must-Carry Provisions

The Supreme Court ruled that the D.C. District Court erred in granting summary judgment for the Federal government in *Turner Broadcasting*

System, Inc. v. F.C.C., 114 S. Ct. 2445 (1994). The case challenged the constitutionality of the Cable Television Consumer Protection and Competition Act of 1992. Appellants argued that the act's must-carry provisions, which require cable television systems to commit some of their channels to transmitting local commercial and public broadcast stations, abridged free speech in violation of the First Amendment.

Justice Kennedy, writing for the Supreme Court, agreed with the lower court that an intermediate level of scrutiny should be applied to evaluate the constitutionality of the content-neutral must-carry provisions, because they impose an incidental burden on speech. The relaxed standard of scrutiny of governmental restraints and obligations on broadcasters, justified by the scarcity of broadcast frequencies, is inapplicable to the cable television medium, he said. Rather, cable television regulation should be scrutinized by heightened First Amendment standards that apply to nonbroadcast media. However, because must-carry regulations impose burdens on speech and confer privileges without reference to the ideas or news expressed, they are content-neutral, and an intermediate level of scrutiny is appropriate.

The case was remanded for further proof on the issues of whether local broadcasting needs the economic protection of must-carry rules and, if it does, whether those rules "burden substantially more speech than is necessary to further the government's legitimate interests."

Visual Artists Rights Act (VARA)

In the first reported test of VARA, plaintiffs in *Carter v. Helmsley-Spear, Inc.*, 852 F. Supp. 228 (S.D.N.Y. 1994), won a preliminary injunction to restrain defendants from altering, defacing, modifying, or mutilating plaintiffs' sculptures and from denying plaintiffs access to the sculpture for the purpose of viewing, photographing, or videotaping the work.

Plaintiffs were three individual sculptors who worked as partners and contracted to create and install a sculpture in the lobby of a building. They worked on the sculpture for a period of more than one and one-half years when defendants, successor lessees to the property, announced their intent to remove or materially alter the work.

The court held that a dismantling would cause irreparable harm that could not be remedied by money damages. Therefore, it issued an injunction during the pendency of the action and gave plaintiffs unrestricted access to the property during regular business hours to view, photograph, and show the work.

After reviewing the relevant factors of employment for hire set forth in *C.C.N.V. v. Reid*, 490 U.S. 730 (1989), the court found that plaintiffs' complete artistic freedom to create the work, their contractual retention of copyright, their ability to hire unpaid assistants, and their use of their own costly raw materials, among other factors, constituted a strong showing that the work was not made for hire and was therefore eligible for VARA protection.

Following a full trial without a jury, the court issued a permanent injunction, ruling that plaintiffs own the copyright, enjoining defendants from denying plaintiffs reasonable access to the work, and enjoining defendants from "distorting, mutilating or modifying plaintiffs' art work." *Carter V. Helmsley-Spear, Inc.*, 94 Civ. 2922 (S.D.N.Y. Aug. 31, 1994).

The court affirmed that the work was a single, interrelated work, and that its incorporation of elements of applied art did not remove it from VARA protection. Further, endorsing the earlier opinion that the work was not "made for hire," Judge Edelstein gave emphasized weight to the hiring party's right to control the creation, to the skill required, to the employee benefits provision, to the tax treatment of the hiree, and to the hiring party's right to assign additional projects. Finding that each of these factors except for tax withholding during a limited period weighed in favor of

the artists, and that a majority of other factors supported plaintiff's contentions, the court found plaintiffs to be the copyright owners and the work to be subject to VARA.

The court heard expert testimony on the artists' reputation and on the "recognized stature of the work" and found that enjoining its destruction or mutilation was warranted to prevent its distortion, mutilation, modification, or destruction.

Finally, the opinion held that VARA is not constitutionally impermissible.

Refusal to Register

Custom Chrome, Inc. v. Barbara Ringer, (Acting) Register of Copyrights, Civ. No. 93-2634 (D. D.C. filed Dec. 28, 1993), concerns review under the Administrative Procedure Act of a refusal to register 23 motorcycle parts. The parts were refused registration on the grounds that they were useful articles that lacked the separable artistic authorship required by the copyright law. In its complaint, Custom Chrome asserts that the 23 motorcycle parts are copyrightable, and that refusal to register was arbitrary, capricious, abuse of discretion or otherwise not in accordance with law. Both parties have motions for summary judgement pending before the court.

Submitted by,
Marybeth Peters

*Register of Copyrights and
Associate Librarian of Congress
for Copyright Services*

International Copyright Relations of the United States as of September 30, 1994

This table sets forth U.S. copyright relations of current interest with the other independent nations of the world. Each entry gives country name (and alternate name) and a statement of copyright relations. The following code is used:

| | |
|-------------------|---|
| Berne | Party to the Berne Convention for the Protection of Literary and Artistic Works as of the date given. Appearing within parentheses is the latest Act ¹ of the Convention to which the country is party. The effective date for the United States was March 1, 1989. The latest Act of the Convention to which the United States is party is the revision done at Paris on July 24, 1971. |
| Bilateral | Bilateral copyright relations with the United States by virtue of a proclamation or treaty, as of the date given. Where there is more than one proclamation or treaty, only the date of the first one is given. |
| BAC | Party to the Buenos Aires Convention of 1910, as of the date given. U.S. ratification deposited with the government of Argentina, May 1, 1911; proclaimed by the President of the United States, July 13, 1914. |
| None | No copyright relations with the United States. |
| Phonogram | Party to the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms, Geneva, 1971, as of the date given. The effective date for the United States was March 10, 1974. |
| SAT | Party to the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, Brussels, 1974, as of the date given. The effective date for the United States was March 7, 1985. |
| UCC Geneva | Party to the Universal Copyright Convention, Geneva, 1952, as of the date given. The effective date for the United States was September 16, 1955. |
| UCC Paris | Party to the Universal Copyright Convention as revised at Paris, 1971, as of the date given. The effective date for the United States was July 10, 1974. |
| Unclear | Became independent since 1943. Has not established copyright relations with the United States, but may be honoring obligations incurred under former political status. |

| | |
|---|---|
| Afghanistan None | Berne June 10, 1967 (Brussels) ² Phonogram June 30, 1973 ³ |
| Albania Berne Mar. 6, 1994 (Paris) ² | Armenia SAT Dec. 13, 1993 |
| Algeria UCC Geneva Aug. 28, 1973 UCC Paris July 10, 1974 | Australia Bilateral Mar. 15, 1918 Berne April 14, 1928 (Paris) ² UCC Geneva May 1, 1969 Phonogram June 22, 1974 UCC Paris Feb. 28, 1978 SAT Oct. 26, 1990 |
| Andorra UCC Geneva Sept. 16, 1955 | |
| Angola Unclear | |
| Antigua and Barbuda Unclear | Austria Bilateral Sept. 20, 1907 Berne Oct. 1, 1920 (Paris) ² UCC Geneva July 2, 1957 SAT Aug. 6, 1982 ⁴ UCC Paris Aug. 14, 1982 Phonogram Aug. 21, 1982 |
| Argentina Bilateral Aug. 23, 1934 BAC April 19, 1950 UCC Geneva Feb. 13, 1958 | |

Bahamas, The
Berne July 10, 1973 (Brussels)²
UCC Geneva Dec. 27, 1976
UCC Paris Dec. 27, 1976

Bahrain
None

Bangladesh
UCC Geneva Aug. 5, 1975
UCC Paris Aug. 5, 1975

Barbados
UCC Geneva June 18, 1983
UCC Paris June 18, 1983
Berne July 30, 1983 (Paris)²
Phonogram July 29, 1983

Belau
Unclear

Belgium
Berne Dec. 5, 1887 (Brussels)²
Bilateral July 1, 1891
UCC Geneva Aug. 31, 1960

Belize
UCC Geneva Dec. 1, 1982

Benin
(formerly Dahomey)
Berne Jan. 3, 1961 (Paris)²

Bhutan
None

Bolivia
BAC May 15, 1914
UCC Geneva Mar. 22, 1990
UCC Paris Mar. 22, 1990
Berne Nov. 4, 1993 (Paris)²

Bosnia and Herzegovina
UCC Geneva May 11, 1966
UCC Paris July 10, 1974
Berne Mar. 6, 1992 (Paris)²
SAT Mar. 6, 1992

Botswana
Unclear

Brazil
BAC Aug. 31, 1915
Berne Feb. 9, 1922 (Paris)²
Bilateral April 2, 1957
UCC Geneva Jan. 13, 1960
Phonogram Nov. 28, 1975
UCC Paris Dec. 11, 1975

Brunei
Unclear

Bulgaria
Berne Dec. 5, 1921 (Paris)²
UCC Geneva June 7, 1975
UCC Paris June 7, 1975

Burkina Faso
(formerly Upper Volta)
Berne Aug. 19, 1963 (Paris)²
Phonogram Jan. 30, 1988

Burma
Unclear

Burundi
Unclear

Cambodia
UCC Geneva Sept. 16, 1955

Cameroon
Berne Sept. 21, 1964 (Paris)²
UCC Geneva May 1, 1973
UCC Paris July 10, 1974

Canada
Bilateral Jan. 1, 1924
Berne April 10, 1928 (Rome)²
UCC Geneva Aug. 10, 1962

Cape Verde
Unclear

Central African Republic
Berne Sept. 3, 1977 (Paris)²

Chad
Berne Nov. 25, 1971 (Brussels)²

Chile
Bilateral May 25, 1896
BAC June 14, 1955
UCC Geneva Sept. 16, 1955
Berne June 5, 1970 (Paris)²
Phonogram Mar. 24, 1977

China
Bilateral Jan. 13, 1904⁵
Bilateral Mar. 17, 1992⁹
Berne Oct. 15, 1992 (Paris)²
UCC Geneva Oct. 30, 1992
UCC Paris Oct. 30, 1992
Phonogram Apr. 30, 1993

Colombia
BAC Dec. 23, 1936
UCC Geneva June 18, 1976
UCC Paris June 18, 1976
Berne Mar. 7, 1988 (Paris)²
Phonogram Mar. 16, 1994

Comoros
Unclear

Congo
Berne May 8, 1962 (Paris)²

Costa Rica⁴
Bilateral Oct. 19, 1899
BAC Nov. 30, 1916
UCC Geneva Sept. 16, 1955
Berne June 10, 1978 (Paris)²
UCC Paris Mar. 7, 1980
Phonogram June 17, 1982

Côte d'Ivoire (Ivory Coast)
Berne Jan. 1, 1962 (Paris)²

Croatia
UCC Geneva May 11, 1966
UCC Paris July 10, 1974
Berne Oct. 8, 1991 (Paris)²
SAT Oct. 8, 1991

Cuba
Bilateral Nov. 17, 1903
UCC Geneva June 18, 1957

Cyprus
Berne Feb. 24, 1964 (Paris)²
UCC Geneva Dec. 19, 1990
UCC Paris Dec. 19, 1990
Phonogram Sept. 30, 1993

Czech Republic
UCC Geneva Jan. 6, 1960
UCC Paris Apr. 17, 1980
Berne Jan. 1, 1993 (Paris)²
Phonogram Jan. 1, 1993

Czechoslovakia¹¹
Bilateral Mar. 1, 1927

Denmark
Bilateral May 8, 1893
Berne July 1, 1903 (Paris)²
UCC Geneva Feb. 9, 1962
Phonogram Mar. 24, 1977
UCC Paris July 11, 1979

Djibouti
Unclear

Dominica
Unclear

Dominican Republic⁴
BAC Oct. 31, 1912
UCC Geneva May 8, 1983
UCC Paris May 8, 1983

Ecuador
BAC Aug. 31, 1914
UCC Geneva June 5, 1957
Phonogram Sept. 14, 1974
UCC Paris June 6, 1991
Berne Oct. 9, 1991 (Paris)²

Egypt
Berne June 7, 1977 (Paris)²
Phonogram April 23, 1978

El Salvador
Bilateral June 30, 1908, by virtue of
Mexico City Convention, 1902

Phonogram Feb. 9, 1979
 UCC Geneva Mar. 29, 1979
 UCC Paris Mar. 29, 1979
 Berne Feb. 19, 1994 (Paris)²

Equatorial Guinea
 Unclear

Ethiopia
 None

Fiji
 UCC Geneva Oct. 10, 1970
 Berne Dec. 1, 1971 (Brussels)²
 Phonogram April 18, 1973³

Finland
 Berne April 1, 1928 (Paris)²
 Bilateral Jan. 1, 1929
 UCC Geneva April 16, 1963
 Phonogram April 18, 1973³
 UCC Paris Nov. 1, 1986

France
 Berne Dec. 5, 1887 (Paris)²
 Bilateral July 1, 1891
 UCC Geneva Jan. 14, 1956
 Phonogram April 18, 1973³
 UCC Paris July 10, 1974

Gabon
 Berne Mar. 26, 1962 (Paris)²

Gambia, The
 Berne Mar. 7, 1993 (Paris)²

Germany¹⁰
 Berne Dec. 5, 1887 (Paris)^{2,7}
 Bilateral April 16, 1892
 UCC Geneva Sept. 16, 1955
 Phonogram May 18, 1974
 UCC Paris July 10, 1974
 SAT Aug. 25, 1979⁴

Ghana
 UCC Geneva Aug. 22, 1962
 Berne Oct. 11, 1991 (Paris)²

Greece
 Berne Nov. 9, 1920 (Paris)²
 Bilateral Mar. 1, 1932
 UCC Geneva Aug. 24, 1963
 SAT Oct. 22, 1991
 Phonogram Feb. 9, 1994

Grenada
 Unclear

Guatemala⁴
 BAC Mar. 28, 1913
 UCC Geneva Oct. 28, 1964
 Phonogram Feb. 1, 1977

Guinea
 Berne Nov. 20, 1980 (Paris)²
 UCC Geneva Nov. 13, 1981
 UCC Paris Nov. 13, 1981

Guinea-Bissau
 Berne July 22, 1991 (Paris)²

Guyana
 Unclear

Haiti
 BAC Nov. 27, 1919
 UCC Geneva Sept. 16, 1955

Holy See
 (See entry under Vatican City)

Honduras⁴
 BAC April 27, 1914
 Berne Jan. 25, 1990 (Paris)²
 Phonogram Mar. 6, 1990

Hungary
 Bilateral Oct. 16, 1912
 Berne Feb. 14, 1922 (Paris)²
 UCC Geneva Jan. 23, 1971
 UCC Paris July 10, 1974
 Phonogram May 28, 1975

Iceland
 Berne Sept. 7, 1947 (Rome)²
 UCC Geneva Dec. 18, 1956

India
 Berne April 1, 1928 (Paris)²
 Bilateral Aug. 15, 1947
 UCC Geneva Jan. 21, 1958
 Phonogram Feb. 12, 1975
 UCC Paris Jan. 7, 1988

Indonesia
 Bilateral Aug. 1, 1989

Iran
 None

Iraq
 None

Ireland
 Berne Oct. 5, 1927 (Brussels)²
 Bilateral Oct. 1, 1929
 UCC Geneva Jan. 20, 1959

Israel
 Bilateral May 15, 1948
 Berne Mar. 24, 1950 (Brussels)²
 UCC Geneva Sept. 16, 1955
 Phonogram May 1, 1978

Italy
 Berne Dec. 5, 1887 (Paris)²
 Bilateral Oct. 31, 1892
 UCC Geneva Jan. 24, 1957
 Phonogram Mar. 24, 1977
 UCC Paris Jan. 25, 1980
 SAT July 7, 1981⁴

Ivory Coast
 (See entry under Côte d'Ivoire)

Jamaica
 Berne Jan. 1, 1994 (Paris)²
 Phonogram Jan. 11, 1994

Japan⁸
 Berne July 15, 1899 (Paris)²
 UCC Geneva April 28, 1956
 UCC Paris Oct. 21, 1977
 Phonogram Oct. 14, 1978

Jordan
 Unclear

Kazakhstan
 UCC Geneva May 27, 1973

Kenya
 UCC Geneva Sept. 7, 1966
 UCC Paris July 10, 1974
 Phonogram April 21, 1976
 SAT Aug. 25, 1979⁴
 Berne June 11, 1993 (Paris)²

Kiribati
 Unclear

Korea
Democratic People's Republic
of Korea
 Unclear

Republic of Korea
 UCC Geneva Oct. 1, 1987
 UCC Paris Oct. 1, 1987
 Phonogram Oct. 10, 1987

Kuwait
 Unclear

Laos
 UCC Geneva Sept. 16, 1955

Lebanon

Berne Sept. 30, 1947 (Rome)²
UCC Geneva Oct. 17, 1959

Lesotho

Berne Sept. 28, 1989 (Paris)²

Liberia

UCC Geneva July 27, 1956
Berne Mar. 8, 1989 (Paris)²

Libya

Berne Sept. 28, 1976 (Paris)²

Liechtenstein

Berne July 30, 1931 (Brussels)²
UCC Geneva Jan. 22, 1959

Luxembourg

Berne June 20, 1888 (Paris)²
Bilateral June 29, 1910
UCC Geneva Oct. 15, 1955
Phonogram Mar. 8, 1976

Macedonia

(former Yugoslav Republic)
Berne Sept. 8, 1991 (Paris)²

Madagascar

(Malagasy Republic)
Berne Jan. 1, 1966 (Brussels)²

Malawi

UCC Geneva Oct. 26, 1965
Berne Oct. 12, 1991 (Paris)²

Malaysia

Berne Oct. 1, 1990 (Paris)²

Maldives

Unclear

Mali

Berne Mar. 19, 1962 (Paris)²

Malta

Berne Sept. 21, 1964 (Rome)²
UCC Geneva Nov. 19, 1968

Mauritania

Berne Feb. 6, 1973 (Paris)²

Mauritius

UCC Geneva Mar. 12, 1968
Berne May 10, 1989 (Paris)²

Mexico

Bilateral Feb. 27, 1896
UCC Geneva May 12, 1957
BAC April 24, 1964

Berne June 11, 1967 (Paris)²
Phonogram Dec. 21, 1973³
UCC Paris Oct. 31, 1975
SAT Aug. 25, 1979⁴

Monaco

Berne May 30, 1889 (Paris)²
Bilateral Oct. 15, 1952
UCC Geneva Sept. 16, 1955
Phonogram Dec. 2, 1974
UCC Paris Dec. 13, 1974

Mongolia

None

Morocco

Berne June 16, 1917 (Paris)²
UCC Geneva May 8, 1972
UCC Paris Jan. 28, 1976
SAT June 30, 1983⁴

Mozambique

Unclear

Namibia

Berne May 21, 1990 (Paris)²

Nauru

Unclear

Nepal

None

Netherlands

Bilateral Nov. 20, 1899
Berne Nov. 1, 1912 (Paris)²
UCC Geneva June 22, 1967
UCC Paris Nov. 30, 1985
Phonogram Oct. 12, 1993

New Zealand

Bilateral Dec. 1, 1916
Berne April 24, 1928 (Rome)²
UCC Geneva Sept. 11, 1964
Phonogram Aug. 13, 1976

Nicaragua⁴

BAC Dec. 15, 1913
UCC Geneva Aug. 16, 1961
SAT Aug. 25, 1979⁴

Niger

Berne May 2, 1962 (Paris)²
UCC Geneva May 15, 1989
UCC Paris May 15, 1989

Nigeria

UCC Geneva Feb. 14, 1962
Berne Sept. 14, 1993 (Paris)²

Norway

Berne April 13, 1896 (Brussels)²
Bilateral July 1, 1905
UCC Geneva Jan. 23, 1963
UCC Paris Aug. 7, 1974
Phonogram Aug. 1, 1978

Oman

None

Pakistan

Berne July 5, 1948 (Rome)²
UCC Geneva Sept. 16, 1955

Panama

BAC Nov. 25, 1913
UCC Geneva Oct. 17, 1962
Phonogram June 29, 1974
UCC Paris Sept. 3, 1980
SAT Sept. 25, 1985

Papua New Guinea

Unclear

Paraguay

BAC Sept. 20, 1917
UCC Geneva Mar. 11, 1962
Phonogram Feb. 13, 1979
Berne Jan. 2, 1992 (Paris)²

Peru

BAC April 30, 1920
UCC Geneva Oct. 16, 1963
UCC Paris July 22, 1985
SAT Aug. 7, 1985
Phonogram Aug. 24, 1985
Berne Aug. 20, 1988 (Paris)²

Philippines

Bilateral Oct. 21, 1948
Berne Aug. 1, 1951 (Brussels)²
UCC status undetermined by
UNESCO. (Copyright Office
considers that UCC relations do
not exist.)

Poland

Berne Jan. 28, 1920 (Rome)²
Bilateral Feb. 16, 1927
UCC Geneva Mar. 9, 1977
UCC Paris Mar. 9, 1977

Portugal

Bilateral July 20, 1893
Berne Mar. 29, 1911 (Paris)²
UCC Geneva Dec. 25, 1956
UCC Paris July 30, 1981

Qatar
None**Romania**

Berne Jan. 1, 1927 (Rome)²
Bilateral May 14, 1928

Russian Federation

UCC Geneva May 27, 1973
SAT Dec. 25, 1991

Rwanda

Berne Mar. 1, 1984 (Paris)²
UCC Geneva Nov. 10, 1989
UCC Paris Nov. 10, 1989

Saint Christopher and Nevis

Unclear

Saint Lucia

Berne Aug. 24, 1993 (Paris)²

Saint Vincent and the Grenadines

UCC Geneva April 22, 1985
UCC Paris April 22, 1985

San Marino

None

São Tomé and Príncipe

Unclear

Saudi Arabia

None

Senegal

Berne Aug. 25, 1962 (Paris)²
UCC Geneva July 9, 1974
UCC Paris July 10, 1974

Seychelles

Unclear

Sierra Leone

None

Singapore

Bilateral May 18, 1987

Slovakia

UCC Geneva Jan. 6, 1960
UCC Paris Apr. 17, 1980
Berne Jan. 1, 1993 (Paris)²
Phonogram Jan. 1, 1993

Slovenia

UCC Geneva May 11, 1966
UCC Paris July 10, 1974
Berne June 25, 1991 (Paris)²
SAT June 25, 1991

Solomon Islands

Unclear

Somalia

Unclear

South Africa

Bilateral July 1, 1924
Berne Oct. 3, 1928 (Brussels)²

Soviet Union

(See entry under Russian Federation)

Spain

Berne Dec. 5, 1887 (Paris)²
Bilateral July 10, 1895
UCC Geneva Sept. 16, 1955
UCC Paris July 10, 1974
Phonogram Aug. 24, 1974

Sri Lanka

(formerly Ceylon)
Berne July 20, 1959 (Rome)²
UCC Geneva Jan. 25, 1984
UCC Paris Jan. 25, 1984

Sudan

Unclear

Suriname

Berne Feb. 23, 1977 (Paris)²

Swaziland

Unclear

Sweden

Berne Aug. 1, 1904 (Paris)²
Bilateral June 1, 1911
UCC Geneva July 1, 1961
Phonogram April 18, 1973³
UCC Paris July 10, 1974

Switzerland

Berne Dec. 5, 1887 (Brussels)²
Bilateral July 1, 1891
UCC Geneva Mar. 30, 1956
UCC Paris Sept. 21, 1993
SAT Sept. 24, 1993
Phonogram Sept. 30, 1993

Syria

Unclear

Tajikistan

UCC Geneva May 27, 1973

Tanzania

Berne July 25, 1994 (Paris)²

Thailand

Bilateral Sept. 1, 1921

Berne July 17, 1931 (Berlin)²

Togo

Berne April 30, 1975 (Paris)²

Tonga

None

Trinidad and Tobago

Berne Aug. 16, 1988 (Paris)²
UCC Geneva Aug. 19, 1988
UCC Paris Aug. 19, 1988
Phonogram Oct. 1, 1988

Tunisia

Berne Dec. 5, 1887 (Paris)²
UCC Geneva June 19, 1969
UCC Paris June 10, 1975

Turkey

Berne Jan. 1, 1952 (Brussels)²

Tuvalu

Unclear

Uganda

Unclear

Ukraine

UCC Geneva May 27, 1973

United Arab Emirates

None

United Kingdom

Berne Dec. 5, 1887 (Paris)²
Bilateral July 1, 1891
UCC Geneva Sept. 27, 1957
Phonogram April 18, 1973³
UCC Paris July 10, 1974

Upper Volta

(See entry under Burkina Faso)

Uruguay

BAC Dec. 17, 1919
Berne July 10, 1967 (Paris)²
Phonogram Jan. 18, 1983
UCC Geneva Apr. 12, 1993
UCC Paris Apr. 12, 1993

Vanuatu

Unclear

Vatican City

(Holy See)

Berne Sept. 12, 1935 (Paris)²
UCC Geneva Oct. 5, 1955
Phonogram July 18, 1977
UCC Paris May 6, 1980

| | |
|--|--|
| Venezuela | Yugoslavia |
| UCC Geneva Sept. 30, 1966 | Berne June 17, 1930 (Paris) ² |
| Phonogram Nov. 18, 1982 | UCC Geneva May 11, 1966 |
| Berne Dec. 30, 1982 (Paris) ² | UCC Paris July 10, 1974 |
| | SAT Aug. 25, 1979 ⁴ |
| Vietnam | Zaire |
| Unclear | Berne Oct. 8, 1963 (Paris) ² |
| Western Samoa | Phonogram Nov. 29, 1977 |
| Unclear | |
| Yemen (Aden) | Zambia |
| Unclear | UCC Geneva June 1, 1965 |
| Yemen (San'a) | Berne Jan. 2, 1992 (Paris) ² |
| None | |
| | Zimbabwe |
| | Berne April 18, 1980 (Rome) ² |

¹ "Paris" means the Berne Convention for the Protection of Literary and Artistic Works as revised at Paris on July 24, 1971 (Paris Act); "Stockholm" means the said Convention as revised at Stockholm on July 14, 1967 (Stockholm Act); "Brussels" means the said Convention as revised at Brussels on June 26, 1948 (Brussels Act); "Rome" means the said Convention as revised at Rome on June 2, 1928 (Rome Act); "Berlin" means the said Convention as revised at Berlin on November 13, 1908 (Berlin Act). NOTE: In each case the reference to Act signifies adherence to the substantive provisions of such Act only, e.g., Articles 1 to 21 of the Paris Act.

² The Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 24, 1971, did not enter into force with respect to the United States until March 1, 1989.

³ The Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms done at Geneva on October 29, 1971, did not enter into force with respect to the United States until March 10, 1974.

⁴ The Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite done at Brussels on May 21, 1974, did not enter into force with respect to the United States until March 7, 1985.

⁵ The government of the People's Republic of China views this treaty as not binding on the PRC. In the territory administered by the authorities on Taiwan the treaty is considered to be in force.

⁶ This country became a party to the Mexico City Convention, 1902, effective June 30, 1908, to which the United States also became a party, effective on the same date. As regards copyright relations with the United States, this Convention is considered to have been superseded by adherence of this country and the United States to the Buenos Aires Convention of 1910.

⁷ Date on which the accession by the German Empire became effective.

⁸ Bilateral copyright relations between Japan and the United States, which were formulated effective May 10, 1906, are considered to have been abrogated and superseded by the adherence of Japan to the UCC Geneva, effective April 28, 1956.

⁹ Bilateral copyright relations between the People's Republic of China and the United States of America were established, effective March 17, 1992, by a Presidential Proclamation of the same date, under the authority of section 104 of title 17 of the United States Code, as amended by the Act of October 31, 1988 (Public Law 100-568, 102 Stat. 2853, 2855).

¹⁰ The dates of adherence by Germany to multilateral treaties include adherence by the Federal Republic of Germany when that country was divided into the Federal Republic of Germany and the German Democratic Republic. However, through the accession, effective October 3, 1990, of the German Democratic Republic to the Federal Republic of Germany, in accordance with the German Unification Treaty of August 31, 1990, the German Democratic Republic ceased, on said date, to be a sovereign state. Previously, the German Democratic Republic had become party to the Paris Act of the Berne Convention for the Protection of Literary and Artistic Works on February 18, 1978, but ceased to be a party to the said Convention on October 3, 1990. The German Democratic Republic had also been a member of the Universal Copyright Convention, having become party to the Geneva text of the said Convention on October 5, 1973, and party to the revised Paris text of the same Convention on December 10, 1980.

¹¹ See also Czech Republic and Slovakia.

Number of Registrations by Subject Matter, Fiscal 1994

| Category of Material | Published | Unpublished | Total |
|--|-----------|-------------|----------------------|
| Nondramatic literary works | | | |
| Monographs and computer-related works | 121,323 | 41,673 | 162,996 |
| Serials | | | |
| Serials (non-group) | 68,692 | | 68,692 |
| Group Serials and Group Daily Newspapers | 6,264 | | 6,264 |
| Total literary works | 196,279 | 41,673 | 237,952 |
| Works of the performing arts, including musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips | 44,219 | 91,880 | 136,099 |
| Works of the visual arts, including two-dimensional works of fine and graphic art, sculptural works, technical drawings and models, photographs, cartographic works commercial prints and labels, and works of applied arts ... | 56,520 | 29,592 | 86,112 |
| Sound recordings | 14,052 | 21,814 | 35,866 |
| Total | 311,070 | 184,959 | 496,029 |
| Renewals | | | 33,264 |
| Mask work registrations | | | 1,039 |
| Grand total all registrations | | | ¹ 530,332 |
| Documents Recorded | | | 21,241 |

¹ Approximately 65,000 claims were examined but were not assigned registration numbers in fiscal 1994 due to the conversion of the numbering operation from manual hand-stamping to an automated optical disk system. These claims have subsequently been numbered, and the result will be a corresponding abrupt increase in claims registered in fiscal 1995.

Copyright Registrations, 1790-1994

| Year(s) Date | Total | Year(s) Date | Total | Year(s) Date | Total |
|------------------------|---------|-----------------|---------|-------------------|------------|
| 1790-1869 ¹ | 150,000 | 1912 | 121,824 | 1955 | 224,732 |
| 1870 | 5,600 | 1913 | 120,413 | 1956 | 224,908 |
| 1871 | 12,688 | 1914 | 124,213 | 1957 | 225,807 |
| 1872 | 14,164 | 1915 | 116,276 | 1958 | 238,935 |
| 1873 | 15,352 | 1916 | 117,202 | 1959 | 241,735 |
| 1874 | 16,283 | 1917 | 112,561 | 1960 | 243,926 |
| 1875 | 16,194 | 1918 | 107,436 | 1961 | 247,014 |
| 1876 | 15,392 | 1919 | 113,771 | 1962 | 254,776 |
| 1877 | 16,082 | 1920 | 127,342 | 1963 | 264,845 |
| 1878 | 16,290 | 1921 | 136,765 | 1964 | 278,987 |
| 1879 | 18,528 | 1922 | 140,734 | 1965 | 293,617 |
| 1880 | 20,993 | 1923 | 151,087 | 1966 | 286,866 |
| 1881 | 21,256 | 1924 | 164,710 | 1967 | 294,406 |
| 1882 | 23,141 | 1925 | 167,863 | 1968 | 303,451 |
| 1883 | 25,892 | 1926 | 180,179 | 1969 | 301,258 |
| 1884 | 27,727 | 1927 | 186,856 | 1970 | 316,466 |
| 1885 | 28,748 | 1928 | 196,715 | 1971 | 329,696 |
| 1886 | 31,638 | 1929 | 164,666 | 1972 | 344,574 |
| 1887 | 35,467 | 1930 | 175,125 | 1973 | 353,648 |
| 1888 | 38,907 | 1931 | 167,107 | 1974 | 372,832 |
| 1889 | 41,297 | 1932 | 153,710 | 1975 | 401,274 |
| 1890 | 43,098 | 1933 | 139,361 | 1976 | 410,969 |
| 1891 | 49,197 | 1934 | 141,217 | 1976 ² | 108,762 |
| 1892 | 54,741 | 1935 | 144,439 | 1977 | 452,702 |
| 1893 | 58,957 | 1936 | 159,268 | 1978 | 331,942 |
| 1894 | 62,764 | 1937 | 156,930 | 1979 | 429,004 |
| 1895 | 67,578 | 1938 | 168,663 | 1980 | 464,743 |
| 1896 | 72,482 | 1939 | 175,450 | 1981 | 471,178 |
| 1897 | 75,035 | 1940 | 179,467 | 1982 | 468,149 |
| 1898 | 75,634 | 1941 | 180,647 | 1983 | 438,256 |
| 1899 | 81,416 | 1942 | 182,232 | 1984 | 502,628 |
| 1900 | 95,573 | 1943 | 160,789 | 1985 | 539,165 |
| 1901 | 93,299 | 1944 | 169,269 | 1986 | 560,212 |
| 1902 | 93,891 | 1945 | 178,848 | 1987 | 581,276 |
| 1903 | 99,122 | 1946 | 202,144 | 1988 | 565,801 |
| 1904 | 104,431 | 1947 | 230,215 | 1989 | 611,328 |
| 1905 | 114,747 | 1948 | 238,121 | 1990 | 643,602 |
| 1906 | 118,799 | 1949 | 201,190 | 1991 | 663,684 |
| 1907 | 124,814 | 1950 | 210,564 | 1992 | 606,253 |
| 1908 | 120,657 | 1951 | 200,354 | 1993 | 604,894 |
| 1909 | 121,141 | 1952 | 203,705 | 1994 ⁴ | 530,332 |
| 1910 | 109,309 | 1953 | 218,506 | | |
| 1911 | 115,955 | 1954 | 222,665 | Total | 25,733,511 |

¹ Estimated registrations made in the offices of the Clerks of the District Courts (source: pamphlet entitled *Records in the Copyright Office Deposited by the United States District Courts Covering the Period 1790-1870*, by Martin A. Roberts, Chief Assistant Librarian, Library of Congress, 1939).

² Registrations made July 1, 1976 through September 30, 1976 reported separately owing to the statutory change making the fiscal years run from October 1 through September 30 instead of July 1 through June 30.

³ Reflects change in reporting procedure.

⁴ Approximately 65,000 claims were examined but were not assigned registration numbers in fiscal 1994 due to the conversion of the numbering operation from manual hand-stamping to an automated optical disk system.

Non-Fee Information Services to Public, Fiscal 1994

| | |
|---|----------------------|
| Information and Reference Division direct reference services | |
| In person | 26,022 |
| By correspondence | 103,467 |
| By telephone | 310,401 |
| Total | 439,890 |
| Licensing Division direct reference services | |
| In person | 655 |
| By correspondence | 2,012 |
| By telephone | 6,633 |
| Total | 9,300 |
| Grand total direct reference services | ¹ 455,198 |

¹ Includes 6,008 telephone reference services provided by the Receiving and Processing Division.

Fees Received, Fiscal 1994

| Receipts | Fees |
|---|---------------|
| Applications for Registration | \$ 11,791,740 |
| Fees for mask works | 21,160 |
| Renewals | 663,900 |
| Total | \$ 12,476,800 |
| Fees for recordation of documents | 502,910 |
| Fees for certifications | 125,160 |
| Fees for searches | 251,250 |
| Fees for expedited services | 675,600 |
| Fees for other services | 104,513 |
| Total | \$ 1,659,433 |
| Grand Total | \$ 14,136,233 |
| | |
| Fees transferred to the appropriation | \$ 13,952,030 |

Estimated Value of Materials Transferred, Fiscal 1994

| | Registered works transferred to other departments of the Library | Non-registration works transferred to other departments of the Library | Total works transferred to other departments of the Library | Average Unit Price | Total value of works transferred to other departments of the Library | Works transferred to National Library of Medicine |
|--|--|--|---|-----------------------|--|---|
| Books | 162,611 | 28,218 | 190,829 | \$35.00 | \$ 6,679,015 | |
| Serials | 194,202 | 283,659 | 477,861 | 7.70 | 3,679,530 | |
| Computer-related works | 6,199 | 953 | 7,152 | ² | 1,090,680 | |
| Motion Pictures | 10,246 | 295 | 10,541 | ³ | 4,690,745 | 18 |
| Music | 39,424 | 810 | 40,234 | 24.00 | 965,616 | |
| Dramatic Works, choreography, and pantomimes | 996 | | 996 | 35.00 | 34,860 | |
| Other works of the performing arts | 795 | | 795 | 24.00 | 19,080 | |
| Sound Recordings | 20,882 | 2,922 | 23,804 | 10.00 | 238,040 | 66 |
| Maps | 3,003 | 480 | 3,483 | 26.00 | 90,558 | |
| Prints, pictures, and works of art | 1,246 | 141 | 1,387 | 21.00 | 29,127 | 32 |
| Total | 439,604 | 317,478 | 757,082 | | \$17,517,251 | 116 |

¹ An additional 2,755 copies were returned to the remitter, but available for selection by the Library under Motion Picture agreements.

² 35% Software @ \$20, 20% CD ROM @ \$500 and 45% printouts of indeterminate value.

³ 95% video @ \$100 and 5% films @ \$7,000.

*Financial Statement of Royalty Fees for Compulsory Licenses for Secondary
Transmissions by Cable Systems for Calendar Year 1993*

| | | |
|--|-------------------|--------------------------|
| Royalty fees deposited | \$ 183,764,467.27 | |
| Interest income paid on investments | 18,219,247.17 | |
| Gain on matured securities | 20,731.25 | |
| Transfers in | 1,826.37 | |
| | | <u>\$ 202,006,272.06</u> |
| Less: Operating costs | \$ 2,063,761.00 | |
| Refunds issued | 1,556,769.75 | |
| Cost of investments | 184,132,981.87 | |
| Cost of initial investments | 12,780,028.03 | |
| Transfers out | 7,021.86 | |
| | | <u>\$ 200,540,562.51</u> |
| Balance as of September 30, 1994 | \$ 1,465,709.55 | |
| Plus: Face amount of securities due | 185,090,000.00 | |
| Estimated interest income due | 7,496,575.00 | |
| Less: Pending refunds | | 2,514,230.90 |
| Cable royalty fees for calendar year 1993 available for distribution by the Library of Congress | \$ 191,538,053.65 | |

*Financial Statement of Royalty Fees for Statutory Licenses for Secondary
Transmissions by Satellite Carriers for Calendar Year 1993*

| | | |
|--|------------------|------------------|
| Royalty fees deposited | \$ 11,941,191.54 | |
| Interest income | 233,714.41 | |
| Gain on matured securities | 160,051.21 | |
| | | \$ 12,334,957.16 |
| Less: Operating costs | \$ 46,446.00 | |
| Cost of investments | 12,226,702.33 | |
| Cost of initial investments | 49,398.93 | |
| | | \$ 12,322,547.26 |
| Balance as of September 30, 1994 | \$ 12,409.90 | |
| Plus: Face amount of securities due | 12,310,000.00 | |
| Satellite carrier royalty fees for calendar year 1993 available for distribution by the Library of Congress | | \$ 12,322,409.90 |

*Financial Statement of Royalty Fees for Statutory Obligations for Distribution
of Digital Audio Recording Equipment and Media for Calendar Year 1993*

| | | | |
|---|----|------------|---------------|
| Royalty fees deposited | \$ | 517,038.51 | |
| Gain on matured securities | | 5,624.91 | |
| Transfers in | | 2,466.53 | |
| | | | \$ 525,129.95 |
| Less: Operating costs | \$ | 106,793.00 | |
| Refunds | | 475.48 | |
| Cost of investments | | 394,685.87 | |
| Cost of initial investments | | 1,369.90 | |
| CRT operating costs | | 10,000.00 | |
| Distribution of fees | | 11,093.26 | |
| | | | \$ 524,417.51 |
| Balance as of September 30, 1994 | \$ | 712.44 | |
| Plus: Face amount of securities due | | 394,685.87 | |
| Estimated interest income due | | 15,294.08 | |
| Audio Home Recording Act royalty fees for calendar year 1993 available for distribution by the Library of Congress | \$ | | 410,692.39 |



END

DATE FILMED

03/07/96